

§ 250.90

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shall contain provision for its termination to the extent that performance may conflict with any rule, regulation or order of the Commission adopted before or after the making of such contract.

§ 250.90 Transactions limited to cost.

(a) Except as permitted by this section, or any other applicable rule, regulation, or order of the Commission:

(1) No registered holding company shall perform any service or construction for, or sell any goods to, any associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing service or construction for, or selling goods to, associate public utility companies, or enter into any contract to do so, and

(2) No subsidiary company of a registered holding company (including a mutual service company) shall perform any service or construction for, or sell any goods to, any associate company thereof, or enter into any contract to do so, at more than cost as determined pursuant to § 250.91 or any other applicable rule, regulation, or order of the Commission, or in the absence thereof, in accordance with sound methods of determining cost. In the case of a sale of used goods the price shall be not more than cost less depreciation. Any charges on a basis of estimated cost shall be readjusted to actual cost at least annually, if for services or goods, and upon completion of individual projects, in case of construction.

(b) In the case of construction for an associate company of a specific project, building, or unit on which substantial expenses were incurred before August 26, 1935, pursuant to a contract made before that date, the holding company or subsidiary performing the construction shall be entitled to the proportion of its profit or fee earned prior to April 1, 1936.

(c) If a sale of goods is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods, a lump sum price for the entire transaction may include such goods without the assignment of a specific portion of the price to the cost of such goods.

(d) The price of services, construction, or goods need not be limited to cost although the transaction comes within the terms of paragraph (a) of this section if:

(1) Neither the company performing the services or construction, or selling the goods, nor the associate company receiving such services or construction, or buying such goods, is (i) a public utility or holding company, (ii) an investment company or investment trust, including any company or trust which is a medium of investment in securities for the benefit of a registered holding company or its employees or officers, or (iii) a company engaged in the business of selling goods to associate companies or performing services or construction, or (iv) a company controlling, directly or indirectly, any company specified in paragraph (d)(1) (i), (ii), or (iii) of this section; or

(2) Such transaction consists of a sale of goods produced by the seller.

§ 250.91 Determination of cost.

(a) Subject to the provisions of this section and of any other applicable rule, regulation, or order of the Commission, a transaction shall be deemed to be performed at not more than cost if the price (taking into account all charges) does not exceed a fair and equitable allocation of expenses (including the price paid for goods) plus reasonable compensation for necessary capital procured through the issuance of capital stock (or similar securities of an unincorporated company).

(b) Direct charges shall be made so far as costs can be identified and related to the particular transactions involved without excessive effort or expense. Other elements of cost, including taxes, interest, other overhead, and compensation for the use of capital procured by the issuance of capital stock (or similar securities of an unincorporated company) shall be fairly and equitably allocated. Interest on borrowed capital and compensation for the use of capital shall represent a reasonable return on only the amount of capital reasonably necessary for the performance of services or construction for, or the selling of goods to, customers for whom transactions are required by the rules of the Commission